

REMARKS

This accompanies the filing of an RCE for the above-identified application. The above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration are respectfully requested in view of the preceding amendments and the following remarks.

Rejections under 35 USC § 102

The rejection of claims 1, 2, 4 and 5 under 35 USC 102(b) as being anticipated by Doniger, 3,892,373 is respectfully traversed.

In this rejection, it is advanced that Doniger discloses:

capturing a predetermined vertical profile segment aircraft in a capture zone by applying a transition between a guidance submode which the aircraft is in and the guidance submode adapted to the following of the vertical profile segment to be captured determining the width of the capture zone as a function of the height *h* of the vertical profile to be captured and of **the speed *v* which the aircraft has when plumb with this height** when the aircraft is not on the profile or at this height when the aircraft is on the profile; and **the width of the capture zone is determined as a function of the height *h* and of the square of the speed *v*** on column 4 and on lines 25-28, on column 5.
(Emphasis added)

However, Applicant submits that the rejection fails to identify where in the reference each of the cited elements or steps can be found.

Attention is called to the fact that rejections under the 35 USC § 102 statute, are based on the premise that to anticipate a claim, each and every element of the claim must be shown in a single reference. When a claimed element cannot be found in the reference, the reference does not anticipate the claimed invention. Further, it is incumbent upon the Examiner to identify where in the reference each element may be found. Ex parte Levy, 17 U.S.P.Q.2d 1461 (Bd. Pat. App. Infr. 1990).

Consequently, when the Examiner fails to identify a claimed element, the Examiner has failed to establish a *prima facie* case of anticipation. As noted above, this is the case in this instance inasmuch as the claims recite at least the steps of capturing a predetermined vertical profile segment in a capture zone; applying a transition between a first guidance submode and a second guidance submode adapted to follow the captured vertical profile segment; and then determining a width of the capture zone.

The rejection is deemed defective in that it merely repeats the claims followed by the conclusion that it is all disclosed in the single reference to Doniger. If this rejection is to be maintained, it is requested that the sections of the Doniger reference that are deemed to disclose the claimed elements, be clearly and unambiguously identified.

In the Advisory Action dated July 17, 2009, it is stated that the Applicant's argument (submitted in the response filed on July 10, 2009) was unpersuasive since "plumb with the height h" means directly above or below height h, thus, prior art's teaching of "far from the centerline" actually anticipates Applicant's claimed invention since if an aircraft is away from the centerline, it would inherently be plumb to any height captured.

It is pointed out that for something to be "inherent" it must occur in each and every instance. Therefore, to clarify the claims, amendments have been made to change "plumb with the height h" to be "plumb with the vertical profile segment." While this is essentially the same thing and does not introduce any new matter, it clarifies over the disclosure of the Doniger reference which at column 5, lines 22-25 states:

Prior to beam capture, when aircraft 2 is far from beam centerline 4, the filtered displacement signal portion of signal θ_c overrides the rate signal portion h_ϵ . (Emphasis added)

Therefore, this indicates that the first step of the claim, viz., "capturing a predetermined vertical profile segment in a capture zone" has not yet occurred and as such, a height plumb to the something that is not yet captured cannot meet the claimed requirements as not clarified by the above amendments. Besides, there are many positions an aircraft could be in without being plumb to the vertical profile segment.

The speed v which the aircraft has when plumb with the height h of the vertical profile to be captured, is not at all disclosed or suggested in the Doniger reference.

In light of this, it is not possible for this speed to occur in a position which is “plumb” over a distance above or below the glide path centerline 4 because it is far from the beam center line and is closing on the center line prior actually capturing the same.

Of course, since this situation is such that the aircraft is far from the centerline, there is no relationship other than the ground which has any direct relevance to the situation and thus the ground speed is the speed parameter which is disclosed at this section of the Doniger reference.

Indeed, the word “speed” occurs only twice in this reference. Once in connection with “vertical speed hold” (viz., altitude) and the other in connection with ground speed (noted above). This renders the rejection totally untenable. The word “plumb” or anything remotely similar is not found in the Doniger reference.

As noted *supra*, if this anticipation rejection is to be maintained it is imperative that the subject matter which is claimed be clearly indicated as being disclosed in the Doniger reference and preferably quoted *verbatim* in any subsequent office action.

Rejections under 35 USC § 103

The rejection of claims 3 and 6 under 35 USC § 103(a) as being unpatentable over Doniger, as applied above in further view of Lambregts et al. 5079711, is respectfully traversed.

As noted above, the Doniger reference fails to anticipate the subject matter of claim 1. Therefore, there is nothing in Lambregts et al. that would assist in overcoming this shortcoming and therefore nothing that would assist in establishing a *prima facie* case of obviousness.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the application is in condition for allowance and a Notice to that effect is earnestly solicited.

To the extent necessary, a petition for an extension of time under 37 CFR 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,
LOWE HAUPTMAN HAM & BERNER, LLP



Kenneth M. Berner
Registration No. 37,093

1700 Diagonal Road, Suite 300
Alexandria, Virginia 22314
(703) 684-1111
(703) 518-5499 Facsimile
Date: September 14, 2009
KMB/KT/ser